

107TH CONGRESS  
1ST SESSION

# H. R. 1409

To reform the regulation of certain housing-related Government-sponsored enterprises, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 4, 2001

Mr. BAKER introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To reform the regulation of certain housing-related Government-sponsored enterprises, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Secondary Mortgage Market Enterprises Regulatory Im-  
6 provement Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for  
8 this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—REFORM OF REGULATION OF FANNIE MAE AND  
FREDDIE MAC

### Subtitle A—Improvement of Supervision

- Sec. 101. Transfer of authority to regulate safety and soundness of enterprises to Board of Governors of Federal Reserve System.
- Sec. 102. Duties and authorities of Board.
- Sec. 103. Regulations.
- Sec. 104. Assessments.
- Sec. 105. Termination of general regulatory authority of HUD.
- Sec. 106. Approval of Board for new activities.
- Sec. 107. Limitation on nonmission-related assets.
- Sec. 108. Conforming loan limits.
- Sec. 109. Registration of securities.
- Sec. 110. Treasury line of credit.
- Sec. 111. Public disclosure of information.
- Sec. 112. Risk-based capital test for enterprises.
- Sec. 113. Minimum and critical capital levels.
- Sec. 114. Definitions.

### Subtitle B—Prompt Corrective Action

- Sec. 131. Capital classifications.
- Sec. 132. Supervisory actions applicable to undercapitalized enterprises.
- Sec. 133. Supervisory actions applicable to significantly undercapitalized enterprises.
- Sec. 134. Receivership.

### Subtitle C—Enforcement Actions

- Sec. 151. Cease-and-desist proceedings.
- Sec. 152. Temporary cease-and-desist proceedings.
- Sec. 153. Removal and prohibition authority.
- Sec. 154. Enforcement and jurisdiction.
- Sec. 155. Civil money penalties.
- Sec. 156. Criminal penalty.

### Subtitle D—Reporting Regarding Enterprises

- Sec. 161. Reporting regarding enterprises.

### Subtitle E—General Provisions

- Sec. 171. Conforming and technical amendments.
- Sec. 172. Effective date.

## TITLE II—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY

- Sec. 201. Abolishment of OFHEO.
- Sec. 202. Continuation and coordination of certain regulations.
- Sec. 203. Transfer and rights of employees of OFHEO.
- Sec. 204. Transfer of property and facilities.

1 **TITLE I—REFORM OF REGULA-**  
2 **TION OF FANNIE MAE AND**  
3 **FREDDIE MAC**

4 **Subtitle A—Improvement of**  
5 **Supervision**

6 **SEC. 101. TRANSFER OF AUTHORITY TO REGULATE SAFETY**  
7 **AND SOUNDNESS OF ENTERPRISES TO**  
8 **BOARD OF GOVERNORS OF FEDERAL RE-**  
9 **SERVE SYSTEM.**

10 Part 1 of subtitle A of title XIII of the Housing and  
11 Community Development Act of 1992 is amended by strik-  
12 ing sections 1311 and 1312 (12 U.S.C. 4511, 4512) and  
13 inserting the following new section:

14 **“SEC. 1311. SUPERVISION AND REGULATION BY FEDERAL**  
15 **RESERVE BOARD.**

16 “(a) IN GENERAL.—The enterprises shall, to the ex-  
17 tent provided in this title, be subject to the supervision  
18 and regulation of the Board of Governors of the Federal  
19 Reserve System. The Board shall succeed to the authority  
20 of the Director of the Office of Federal Housing Enter-  
21 prise Oversight of the Department of Housing and Urban  
22 Development and the general regulatory and any other au-  
23 thority of the Secretary of Housing and Urban Develop-  
24 ment with respect to the enterprises (except as specifically  
25 provided otherwise in this Act, the Federal National Mort-

1 gage Association Charter Act, the Federal Home Loan  
 2 Mortgage Corporation Act, and any other provision of  
 3 Federal law).

4 “(b) DELEGATION OF AUTHORITY.—Pursuant to sec-  
 5 tion 11(k) of the Federal Reserve Act, the Board of Gov-  
 6 ernors of the Federal Reserve System may carry out any  
 7 of its responsibilities for ongoing supervision and examina-  
 8 tion of the enterprises through one or more of the Federal  
 9 Reserve banks. The Board may not delegate any rule-  
 10 making or policymaking responsibilities.

11 “(c) SAVINGS PROVISION.—The authority of the  
 12 Board to take actions under subtitles B and C does not  
 13 in any way limit the general supervisory and regulatory  
 14 authority granted to the Board under subsection (a).”.

15 **SEC. 102. DUTIES AND AUTHORITIES OF BOARD.**

16 Section 1313 of the Housing and Community Devel-  
 17 opment Act of 1992 (12 U.S.C. 4513) is amended to read  
 18 as follows:

19 **“SEC. 1313. DUTIES AND AUTHORITIES OF BOARD.**

20 “(a) DUTIES.—

21 “(1) PRINCIPAL DUTIES.—The principal duties  
 22 under this title of the Board shall be to ensure that  
 23 the enterprises—

24 “(A) operate in a financially safe and  
 25 sound manner;

1           “(B) carry out their missions only through  
2           activities that are authorized under, and con-  
3           sistent with the purposes of, the provisions of  
4           Federal law that charter the enterprises; and

5           “(C) remain adequately capitalized.

6           “(2) OTHER DUTIES.—To the extent consistent  
7           with paragraph (1), the duty of the Board shall be  
8           to exercise general supervisory and regulatory au-  
9           thority over the enterprises, in accordance with this  
10          title, the Federal National Mortgage Association  
11          Charter Act, the Federal Home Loan Mortgage Cor-  
12          poration Act, and any other provisions of law.

13          “(b) DELEGATION OF AUTHORITY.—The Board may  
14          delegate to officers and employees of the Board any of  
15          the functions, powers, and duties of the Board, with re-  
16          spect to supervision and regulation of the enterprises, as  
17          the Board considers appropriate.”.

18   **SEC. 103. REGULATIONS.**

19          Section 1319G of the Housing and Community De-  
20          velopment Act of 1992 (12 U.S.C. 4526) is amended—

21                 (1) by striking subsection (a) and inserting the  
22          following new subsection:

23          “(a) AUTHORITY.—The Board shall issue any regula-  
24          tions and orders necessary to carry out the duties of the  
25          Board, with respect to supervision and regulation of the

1 enterprises, under this title, the Federal National Mort-  
 2 gage Association Charter Act, and the Federal Home  
 3 Loan Mortgage Corporation Act, and to ensure that the  
 4 purposes of this title and such Acts are accomplished.”;  
 5 and

6 (2) in subsection (c), by striking “Committee on  
 7 Banking, Finance and Urban Affairs” and inserting  
 8 “Committee on Financial Services”.

9 **SEC. 104. ASSESSMENTS.**

10 Section 1316 of the Housing and Community Devel-  
 11 opment Act of 1992 (12 U.S.C. 4516) is amended—

12 (1) by striking subsection (a) and inserting the  
 13 following new subsection:

14 “(a) ANNUAL ASSESSMENTS.—The Board shall es-  
 15 tablish and collect from the enterprises annual assess-  
 16 ments in an amount not exceeding the sum of—

17 “(1) the amount sufficient to provide for rea-  
 18 sonable costs and expenses of the Board, with re-  
 19 spect to regulation and supervision of the enter-  
 20 prises, including the expenses of any examinations  
 21 under section 1317; and

22 “(2) the amount sufficient to provide for rea-  
 23 sonable costs and expenses of the Department of  
 24 Housing and Urban Development in carrying out

1 section 1325 and subparts B and C of this sub-  
2 title.”;

3 (2) in subsection (c), by adding at the end the  
4 following new sentence: “The Board may adjust the  
5 amounts of any semiannual assessments to be paid  
6 pursuant to subsection (b) by the enterprises, as  
7 necessary in the discretion of the Board, to ensure  
8 that the costs of enforcement activities under sub-  
9 titles B and C for an enterprise are borne only by  
10 that enterprise.”;

11 (3) by striking subsection (e) and inserting the  
12 following new subsection:

13 “(e) PAYMENT TO HUD FOR COSTS RELATING TO  
14 HOUSING GOALS.—The Board shall, on a fiscal year basis,  
15 transfer from the Federal Housing Enterprises Oversight  
16 Fund established under subsection (f) to the Secretary of  
17 Housing and Urban Development an amount equal to the  
18 amount determined under subsection (a)(2) for such fiscal  
19 year.”;

20 (4) in subsection (f), by striking the last sen-  
21 tence and inserting the following new sentence:

22 “Notwithstanding any other provision of law, any  
23 assessments collected pursuant to this section and  
24 any amounts in the Fund shall not be construed to  
25 be Government or public funds or appropriated

1 money, shall not be subject to apportionment for  
 2 purposes of chapter 15 of title 31, United States  
 3 Code, or under any other authority, and shall be  
 4 available without fiscal year limitation for carrying  
 5 out the supervisory and regulatory responsibilities of  
 6 the Board with respect to the enterprises, including  
 7 any necessary administrative and nonadministrative  
 8 expenses of the Board in carrying out the purposes  
 9 of this title, the Federal National Mortgage Associa-  
 10 tion Charter Act, and the Federal Home Loan Mort-  
 11 gage Corporation Act, and for annual payments  
 12 under subsection (e).”; and

13 (5) in subsection (g)—

14 (A) by striking paragraphs (1) and (2) and  
 15 inserting the following new paragraphs:

16 “(1) FINANCIAL OPERATING PLANS AND FORE-  
 17 CASTS.—Before the beginning of each fiscal year—

18 “(A) the Board shall submit a copy of the  
 19 financial operating plans and forecasts for the  
 20 Board, with respect to regulation and super-  
 21 vision of the enterprises, to the Director of the  
 22 Office of Management and Budget; and

23 “(B) the Secretary of Housing and Urban  
 24 Development shall submit a copy of the finan-  
 25 cial operating plans and forecasts for the De-



1           partment of Housing and Urban Development,  
2           with respect to responsibilities and activities  
3           under section 1325 and subtitles B and C of  
4           this title, to the Board.

5           “(2) REPORTS OF OPERATIONS.—As soon as  
6           practicable after the end of each fiscal year and each  
7           quarter thereof—

8                   “(A) the Board shall submit a copy of the  
9                   report of the results of the operations of the  
10                  Board, with respect to regulation and super-  
11                  vision of the enterprises, during such period to  
12                  the Director of the Office of Management and  
13                  Budget; and

14                  “(B) the Secretary of Housing and Urban  
15                  Development shall submit a report of the re-  
16                  sults of the operations of the Department of  
17                  Housing and Urban Development, with respect  
18                  to responsibilities and activities under section  
19                  1325 and subtitles B and C of this title, to the  
20                  Board.”; and

21                  (B) in paragraph (3)—

22                          (i) by striking “(A)”; and

23                          (ii) by striking “, and (B)” and in-  
24                          serting the following: “. The annual plans,  
25                          forecasts, and reports required under para-

1                   graphs (1)(B) and (2)(B) shall be in-  
2                   cluded”.

3 **SEC. 105. TERMINATION OF GENERAL REGULATORY AU-**  
4 **THORITY OF HUD.**

5       (a) IN GENERAL.—Part 2 of subtitle A of title XIII  
6 of the Housing and Community Development Act of 1992  
7 is amended—

8           (1) by striking the heading for the part and the  
9       heading for subpart A and inserting the following:

10                   **“PART 2—NEW ACTIVITIES, HOUSING**  
11                   **INFORMATION, AND HOUSING GOALS**

12                   **“Subpart A—New Activities and Housing**  
13                   **Information”;**

14       and

15           (2) by striking section 1321 (12 U.S.C. 4541).

16       (b) RETENTION OF FAIR HOUSING RESPONSIBIL-  
17 ITIES.—Section 1325 of the Housing and Community De-  
18 velopment Act of 1992 (12 U.S.C. 4545) is amended, in  
19 the matter preceding paragraph (1), by inserting “of  
20 Housing and Urban Development” after “The Secretary”.

21       (c) RETENTION OF AUTHORITY TO ESTABLISH AND  
22 ENFORCE HOUSING GOALS.—Part 2 of subtitle A of the  
23 Housing and Community Development Act of 1992 is  
24 amended—

1           (1) by inserting “of Housing and Urban Devel-  
2           opment (in this subpart referred to as the ‘Sec-  
3           retary’)” after “The Secretary”, each place such  
4           term appears in—

5                   (A) the first sentence of section 1331(a)  
6                   (12 U.S.C. 4561(a)); and

7                   (B) section 1341(a) (12 U.S.C. 4581(a));

8           (2) in section 1332 (12 U.S.C. 4562), by strik-  
9           ing subsection (d);

10           (3) in section 1333 (12 U.S.C. 4563), by strik-  
11           ing subsection (d);

12           (4) in section 1334 (12 U.S.C. 4564), by strik-  
13           ing subsection (d);

14           (5) in section 1336 (12 U.S.C. 4566)—

15                   (A) in subsection (b)(3)(C), by inserting  
16                   “the Board,” after “notice to the enterprise,”;  
17                   and

18                   (B) in subsection (c)(5), by inserting “,  
19                   and to the Board,” after “housing plan”;

20           (6) by striking sections 1337 and 1338 (12  
21           U.S.C. 4567, 4562 note);

22           (7) in section 1341(b)(1) (12 U.S.C.  
23           4581(b)(1)), by inserting after the period at the end  
24           the following new sentence: “Immediately upon  
25           issuing and serving a notice of charges under this

1 section, the Secretary shall submit a copy of such  
2 notice to the Board.”;

3 (8) in section 1345 (12 U.S.C. 4585)—

4 (A) in subsection (c)(1)(A), by inserting  
5 “and the Board” after “enterprise”; and

6 (B) in subsection (d), by inserting “, upon  
7 notification to the Board,” after “1343”; and

8 (9) in section 1346(a) (12 U.S.C. 4586(a)), in  
9 the matter preceding paragraph (1), by inserting  
10 “and to the Board” after “the public”.

11 (d) **AUTHORITY OF BOARD OVER DETERMINATIONS**  
12 **BY HUD.**—Section 1331 of the Housing and Community  
13 Development Act of 1992 (12 U.S.C. 4561) is amended—

14 (1) in the section heading by inserting “**AND**  
15 **AUTHORITY OF BOARD**” before the period at the  
16 end; and

17 (2) by adding at the end the following new sub-  
18 section:

19 “(d) **AUTHORITY OF BOARD.**—The Board may review  
20 any action of the Secretary of Housing and Urban Devel-  
21 opment made in carrying out the Secretary’s responsibil-  
22 ities under this subtitle as the Board considers necessary  
23 to ensure that the enterprises comply with section  
24 1313(a)(1).”.

1 **SEC. 106. APPROVAL OF BOARD FOR NEW ACTIVITIES.**

2 (a) IN GENERAL.—Section 1322 of the Housing and  
3 Community Development Act of 1992 (12 U.S.C. 4542)  
4 is amended to read as follows:

5 **“SEC. 1322. PRIOR APPROVAL AUTHORITY FOR NEW ACTIVI-**  
6 **TIES.**

7 “(a) AUTHORITY.—The Board shall have the author-  
8 ity to approve all new activities, and to review all ongoing  
9 activities, of an enterprise to ensure compliance with the  
10 Federal National Mortgage Association Charter Act or the  
11 Federal Home Loan Mortgage Corporation Act, as appli-  
12 cable.

13 “(b) REQUIREMENT FOR PRIOR APPROVAL.—An en-  
14 terprise may not commence any new activity before obtain-  
15 ing the approval of the Board for the new activity, in ac-  
16 cordance with this section.

17 “(c) STANDARD FOR APPROVAL.—The Board may  
18 approve a new activity of an enterprise only if—

19 “(1) the new activity is authorized—

20 “(A) with respect to the Federal National  
21 Mortgage Association, under the Federal Na-  
22 tional Mortgage Association Charter Act or  
23 other Federal law; and

24 “(B) with respect to the Federal Home  
25 Loan Mortgage Corporation, under the Federal

1 Home Loan Mortgage Corporation Act or other  
2 Federal law;

3 “(2) the Board determines that the enterprise  
4 can conduct the new activity in a safe and sound  
5 manner; and

6 “(3) the Board determines that the new activity  
7 is in the public interest.

8 “(d) PROCEDURE FOR APPROVAL.—The Board shall,  
9 by regulation, establish procedures for the enterprises to  
10 obtain the approval of the Board for purposes of sub-  
11 section (b).”.

12 (b) DEFINITION OF NEW ACTIVITY.—Paragraph  
13 (13) of section 1303 of the Housing and Community De-  
14 velopment Act of 1992 (12 U.S.C. 4502(13)) is amended  
15 to read as follows:

16 “(13) NEW ACTIVITY.—The term ‘new activity’  
17 means, with respect to the enterprises, any program,  
18 activity, business process, or investment that directly  
19 or indirectly provides financing or other services re-  
20 lated to conventional mortgages (including pur-  
21 chasing, servicing, selling, and lending on the secu-  
22 rity of such mortgages) that—

23 “(A) is significantly different from pro-  
24 grams, activities, business processes, or invest-  
25 ments that (i) have been approved under this

1 Act, or (ii) were approved or engaged in by an  
2 enterprise before the date of the enactment of  
3 the Housing and Community Development Act  
4 of 1992; or

5 “(B) represents an expansion, in terms of  
6 the dollar volume or number of mortgages or  
7 securities involved, of programs above limits ex-  
8 pressly contained in any prior approval.”.

9 (c) CONFORMING AMENDMENTS.—

10 (1) FANNIE MAE.—Section 302(b)(6) of the  
11 Federal National Mortgage Association Charter Act  
12 (12 U.S.C. 1717(b)(6)) is amended—

13 (A) by striking “program” and inserting  
14 “activity”; and

15 (B) by striking “Secretary” and inserting  
16 “Board of Governors of the Federal Reserve  
17 System”.

18 (2) FREDDIE MAC.—Section 305(c) of the Fed-  
19 eral Home Loan Mortgage Corporation Act (12  
20 U.S.C. 1454(c)) is amended—

21 (A) by striking “program” and inserting  
22 “activity”; and

23 (B) by striking “Secretary” and inserting  
24 “Board of Governors of the Federal Reserve  
25 System”.

1           (3) 1992 ACT.—Section 1369C(a)(4) of the  
 2       Housing and Community Development Act of 1992  
 3       (12 U.S.C. 4622(a)(4)) is amended by striking “pro-  
 4       grams” and inserting “activities”.

5 **SEC. 107. LIMITATION ON NONMISSION-RELATED ASSETS.**

6       Subtitle B of title XIII of the Housing and Commu-  
 7       nity Development Act of 1992 (12 U.S.C. 4611 et seq.)  
 8       is amended—

9           (1) by striking the subtitle designation and  
 10       heading and inserting the following:

11 **“Subtitle B—Required Capital Lev-**  
 12 **els for Enterprises, Special En-**  
 13 **forcement Powers, and Limita-**  
 14 **tion on Nonmission-Related As-**  
 15 **sets”;**

16       and

17           (2) by adding at the end the following new sec-  
 18       tion:

19 **“SEC. 1369E. LIMITATION ON NONMISSION-RELATED AS-**  
 20 **SETS.**

21       “(a) IN GENERAL.—The Board shall, by regulation,  
 22       limit the nonmission-related assets that an enterprise may  
 23       hold at any time. The Board shall define the term ‘non-  
 24       mission-related asset’ for purposes of this section.



1       “(b) RULE OF CONSTRUCTION.—Subsection (a) may  
2 not be construed to authorize an enterprise to engage in  
3 any new activity (as such term is defined in section 1303)  
4 relating to any nonmission-related asset without obtaining  
5 the prior approval of the Board in accordance with section  
6 1322.”.

7       **SEC. 108. CONFORMING LOAN LIMITS.**

8       (a) FANNIE MAE.—Section 302(b)(2) of the Federal  
9 National Mortgage Association Charter Act (12 U.S.C.  
10 1717(b)(2)) is amended by striking the 7th and 8th sen-  
11 tences and inserting the following new sentences: “Such  
12 limitations shall not exceed \$275,000 for a mortgage se-  
13 cured by a single-family residence, \$351,950 for a mort-  
14 gage secured by a 2-family residence, \$425,400 for a  
15 mortgage secured by a 3-family residence, and \$528,700  
16 for a mortgage secured by a 4-family residence, except  
17 that such maximum limitations shall be adjusted effective  
18 January 1 of each year beginning with 2002, subject to  
19 the limitations in this paragraph. Each adjustment shall  
20 be made by adding to each such amount (as it may have  
21 been previously adjusted) a percentage thereof equal to the  
22 percentage increase during the 12-month period ending  
23 with the previous October in the housing price index main-  
24 tained by the Board of Governors of the Federal Reserve  
25 System (pursuant to section 1321 of the Housing and

1 Community Development Act of 1992 (12 U.S.C. 4541)).  
2 If, upon the conclusion of such 12-month period, the level  
3 of the housing price index does not exceed the highest level  
4 attained by such index upon the conclusion of the previous  
5 such 12-month periods, no such adjustment may be made  
6 for the January 1 first occurring thereafter.”.

7 (b) FREDDIE MAC.—Section 305(a)(2) of the Fed-  
8 eral National Mortgage Association Charter Act (12  
9 U.S.C. 1454(a)(2)) is amended by striking the 6th and  
10 7th sentences and inserting the following new sentences:  
11 “Such limitations shall not exceed \$275,000 for a mort-  
12 gage secured by a single-family residence, \$351,950 for  
13 a mortgage secured by a 2-family residence, \$425,400 for  
14 a mortgage secured by a 3-family residence, and \$528,700  
15 for a mortgage secured by a 4-family residence, except  
16 that such maximum limitations shall be adjusted effective  
17 January 1 of each year beginning with 2002, subject to  
18 the limitations in this paragraph. Each adjustment shall  
19 be made by adding to each such amount (as it may have  
20 been previously adjusted) a percentage thereof equal to the  
21 percentage increase during the 12-month period ending  
22 with the previous October in the housing price index main-  
23 tained by the Board of Governors of the Federal Reserve  
24 System (pursuant to section 1321 of the Housing and  
25 Community Development Act of 1992 (12 U.S.C. 4541)).

1 If, upon the conclusion of such 12-month period, the level  
 2 of the housing price index does not exceed the highest level  
 3 attained by such index upon the conclusion of the previous  
 4 such 12-month periods, no such adjustment may be made  
 5 for the January 1 first occurring thereafter.”.

6 (c) HOUSING PRICE INDEX.—Subpart A of part 2 of  
 7 subtitle A of title XIII of the Housing and Community  
 8 Development Act of 1992 (as amended by the preceding  
 9 provisions of this Act) is amended by inserting before sec-  
 10 tion 1322 (12 U.S.C. 4542) the following new section:

11 **“SEC. 1321. HOUSING PRICE INDEX.**

12 “The Board shall establish and maintain a method  
 13 of assessing the national average 1-family house price for  
 14 use for adjusting the conforming loan limitations of the  
 15 enterprises (as such term is defined in section 1303 of  
 16 Federal Housing Enterprises Financial Safety and Sound-  
 17 ness Act of 1992). In establishing such method, the Board  
 18 shall take into consideration the monthly survey of all  
 19 major lenders conducted by the Federal Housing Finance  
 20 Board to determine the national average 1-family house  
 21 price, the House Price Index maintained by the Office of  
 22 Federal Housing Enterprise Oversight of the Department  
 23 of Housing and Urban Development before the effective  
 24 date of the Secondary Mortgage Market Enterprises Reg-  
 25 ulatory Improvement Act, any appropriate house price in-

1 dexes of the Bureau of the Census of the Department of  
2 Commerce, and any other indexes or measures that the  
3 Board considers appropriate.”.

4 **SEC. 109. REGISTRATION OF SECURITIES.**

5 (a) FANNIE MAE.—

6 (1) MORTGAGE-BACKED SECURITIES.—Section  
7 304(d) of the Federal National Mortgage Associa-  
8 tion Charter Act (12 U.S.C. 1719(d)) is amended by  
9 striking the fourth sentence and inserting the fol-  
10 lowing new sentence: “Securities issued by the cor-  
11 poration under this subsection shall not be exempt  
12 securities within the meaning of the laws adminis-  
13 tered by the Securities and Exchange Commission,  
14 but such securities shall not be subject to fees under  
15 section 6(b) of the Securities Act of 1933 or under  
16 section 13(e) or 14(g) of the Securities Exchange  
17 Act of 1934.”.

18 (2) SUBORDINATE OBLIGATIONS.—Section  
19 304(e) of the Federal National Mortgage Association  
20 Charter Act (12 U.S.C. 1719(e)) is amended by  
21 striking the fourth sentence and inserting the fol-  
22 lowing new sentence: “Securities issued by the cor-  
23 poration under this subsection shall not be exempt  
24 securities within the meaning of the laws adminis-  
25 tered by the Securities and Exchange Commission,

1 but such securities shall not be subject to fees under  
2 section 6(b) of the Securities Act of 1933 or under  
3 section 13(e) or 14(g) of the Securities Exchange  
4 Act of 1934.”.

5 (3) SECURITIES.—Section 311 of the Federal  
6 National Mortgage Association Charter Act (12  
7 U.S.C. 1723c) is amended—

8 (A) in the second sentence, by inserting  
9 “by the Association” after “issued”; and

10 (B) by adding at the end the following new  
11 sentence: “Any stock, obligations, securities,  
12 participations, or other instruments issued by  
13 the corporation pursuant to this title shall not  
14 be exempt securities within the meaning of the  
15 laws administered by the Securities and Ex-  
16 change Commission, but such stock, obligations,  
17 securities, participations, or other instruments  
18 shall not be subject to fees under section 6(b)  
19 of the Securities Act of 1933 or under section  
20 13(e) or 14(g) of the Securities Exchange Act  
21 of 1934.”.

22 (b) FREDDIE MAC.—Subsection (g) of section 306 of  
23 the Federal Home Loan Mortgage Corporation Act (12  
24 U.S.C. 1455(g)) is amended to read as follows:

1       “(g) Any securities issued or guaranteed by the Cor-  
 2       poration shall not be exempt securities within the meaning  
 3       of the laws administered by the Securities and Exchange  
 4       Commission, but such securities shall not be subject to  
 5       fees under section 6(b) of the Securities Act of 1933 or  
 6       under section 13(e) or 14(g) of the Securities Exchange  
 7       Act of 1934.”.

8       **SEC. 110. TREASURY LINE OF CREDIT.**

9       (a) FANNIE MAE.—The first sentence of section  
 10       304(c) of the Federal National Mortgage Association  
 11       Charter Act (12 U.S.C. 1719(c)) is amended by striking  
 12       “The” and inserting “Upon a request by the Board of  
 13       Governors of the Federal Reserve System, the”.

14       (b) FREDDIE MAC.—The first sentence of paragraph  
 15       (1) of section 306(c) of the Federal Home Loan Mortgage  
 16       Corporation Act (12 U.S.C. 1455(c)(1)) is amended by  
 17       striking “The” and inserting “Upon a request by the  
 18       Board of Governors of the Federal Reserve System, the”.

19       **SEC. 111. PUBLIC DISCLOSURE OF INFORMATION.**

20       Section 1314 of the Housing and Community Devel-  
 21       opment Act of 1992 (12 U.S.C. 4514) is amended—

22               (1) in the section heading by striking “**BY EN-**  
 23       **TERPRISES**” and inserting “**AND INFORMATION**”;  
 24       and

1           (2) by adding at the end the following new sub-  
2           section:

3           “(c) PUBLIC DISCLOSURE OF INFORMATION.—The  
4   Board shall, by regulation, require each enterprise to dis-  
5   close to the public, on not less than an annual basis, such  
6   financial, business, and other information that the Board  
7   determines would be in the public interest.”.

8   **SEC. 112. RISK-BASED CAPITAL TEST FOR ENTERPRISES.**

9           Section 1361 of the Housing and Community Devel-  
10   opment Act of 1992 (12 U.S.C. 4611) is amended—

11           (1) in subsection (a)(2)(A), by inserting “or  
12   change in such other manner as the Board considers  
13   appropriate,” after “subparagraph (C),”;

14           (2) in subsection (b)(1), by inserting after the  
15   period at the end the following: “Notwithstanding  
16   subsection (a), the Board may, in the sole discretion  
17   of the Board, make any assumptions that the Board  
18   considers appropriate regarding interest rates, home  
19   prices, and new business.”; and

20           (3) in subsection (c)(2), by inserting “or such  
21   other percentage as the Board considers appro-  
22   priate” before the period at the end.

1 **SEC. 113. MINIMUM AND CRITICAL CAPITAL LEVELS.**

2 (a) MINIMUM CAPITAL LEVEL.—Section 1362 of the  
3 Housing and Community Development Act of 1992 (12  
4 U.S.C. 4612) is amended—

5 (1) by striking subsection (b);

6 (2) by striking “(a) IN GENERAL.—”; and

7 (3) in the matter preceding paragraph (1), by  
8 inserting before “the sum of” the following: “the  
9 amount established by the Board, by regulation or  
10 order, as such amount may be adjusted from time-  
11 to-time by the Board to achieve the purposes of this  
12 title, that is not less than”.

13 (b) CRITICAL CAPITAL LEVEL.—Section 1363 of the  
14 Housing and Community Development Act of 1992 (12  
15 U.S.C. 4613) is amended, in the matter preceding para-  
16 graph (1), by inserting before “the sum of” the following:  
17 “the amount established by the Board, by regulation or  
18 order, as such amount may be adjusted from time-to-time  
19 by the Board to achieve the purposes of this title, that  
20 is not less than”.

21 **SEC. 114. DEFINITIONS.**

22 Section 1303 of the Housing and Community Devel-  
23 opment Act of 1992 (12 U.S.C. 4502) is amended—

24 (1) in paragraphs (8), (9), (10), and (19), by  
25 inserting “of Housing and Urban Development”  
26 after “Secretary” each place such term appears;



1 (2) by striking paragraphs (5), (14), and (15);

2 (3) by redesignating paragraphs (7) through  
3 (13) (as amended by the preceding provisions of this  
4 Act) as paragraphs (8) through (14), respectively;

5 (4) by redesignating paragraphs (16) through  
6 (19) as paragraphs (15) through (18), respectively;

7 (5) by inserting after paragraph (6) the fol-  
8 lowing new paragraph:

9 “(7) ENTERPRISE-AFFILIATED PARTY.—The  
10 term ‘enterprise-affiliated party’ means—

11 “(A) any director, officer, employee, or  
12 controlling stockholder of, or agent for, an en-  
13 terprise;

14 “(B) any shareholder, consultant, joint  
15 venture partner, and any other person as deter-  
16 mined by the Board (by regulation or case-by-  
17 case) who participates in the conduct of the af-  
18 fairs of an enterprise; and

19 “(C) any independent contractor (including  
20 any attorney, appraiser, or accountant) who  
21 knowingly or recklessly participates in—

22 “(i) any violation of any law or regu-  
23 lation;

24 “(ii) any breach of fiduciary duty; or

25 “(iii) any unsafe or unsound practice,

1 which caused or is likely to cause more than a  
 2 minimal financial loss to, or a significant ad-  
 3 verse effect on, the enterprise.”;

4 (6) by redesignating paragraphs (2), (3), (4) as  
 5 paragraphs (3), (4), and (5), respectively; and

6 (7) by inserting after paragraph (1) the fol-  
 7 lowing new paragraph:

8 “(2) BOARD.—The term ‘Board’ means the  
 9 Board of Governors of the Federal Reserve Sys-  
 10 tem.”.

## 11 **Subtitle B—Prompt Corrective** 12 **Action**

### 13 **SEC. 131. CAPITAL CLASSIFICATIONS.**

14 Section 1364 of the Housing and Community Devel-  
 15 opment Act of 1992 (12 U.S.C. 4614) is amended—

16 (1) by striking subsection (b) and inserting the  
 17 following new subsection:

18 “(b) DISCRETIONARY CLASSIFICATION.—

19 “(1) GROUNDS FOR RECLASSIFICATION.—The  
 20 Board may reclassify an enterprise under paragraph  
 21 (2) if—

22 “(A) at any time, the Board determines in  
 23 writing that an enterprise is engaging in con-  
 24 duct not approved by the Board that could re-  
 25 sult in a rapid depletion of core capital or that

1 the value of the property subject to mortgages  
2 held or securitized by the enterprise has de-  
3 creased significantly;

4 “(B) after notice and an opportunity for  
5 hearing, the Board determines that an enter-  
6 prise is in an unsafe or unsound condition; or

7 “(C) pursuant to section 1371(b), the  
8 Board deems an enterprise to be engaging in an  
9 unsafe or unsound practice.

10 “(2) RECLASSIFICATION.—In addition to any  
11 other action authorized under this title, including  
12 the reclassification of an enterprise for any reason  
13 not specified in this subsection, if the Board takes  
14 any action described in paragraph (1) the Board  
15 may classify an enterprise—

16 “(A) as undercapitalized, if the enterprise  
17 is otherwise classified as adequately capitalized;

18 “(B) as significantly undercapitalized, if  
19 the enterprise is otherwise classified as under-  
20 capitalized; and

21 “(C) as critically undercapitalized, if the  
22 enterprise is otherwise classified as significantly  
23 undercapitalized.”;

24 (2) by redesignating subsection (d) as sub-  
25 section (e); and

1           (3) by inserting after subsection (c) the fol-  
 2           lowing new subsection:

3           “(d) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

4           “ (1) IN GENERAL.—An enterprise shall make  
 5           no capital distribution if, after making the distribu-  
 6           tion, the enterprise would be undercapitalized.

7           “ (2) EXCEPTION.—Notwithstanding paragraph  
 8           (1), the Board may permit an enterprise to repur-  
 9           chase, redeem, retire, or otherwise acquire shares or  
 10          ownership interests if the repurchase, redemption,  
 11          retirement, or other acquisition—

12           “(A) is made in connection with the  
 13          issuance of additional shares or obligations of  
 14          the enterprise in at least an equivalent amount;  
 15          and

16           “(B) will reduce the financial obligations of  
 17          the enterprise or otherwise improve the finan-  
 18          cial condition of the enterprise.”.

19   **SEC. 132. SUPERVISORY ACTIONS APPLICABLE TO UNDER-**  
 20           **CAPITALIZED ENTERPRISES.**

21           (a) EFFECTIVE DATE FOR SUPERVISORY ACTIONS.—

22          Section 1365(c) of the Housing and Community Develop-  
 23          ment Act of 1992 (12 U.S.C. 4615(c)) is amended by  
 24          striking “1-year” and inserting “6-month”.

1 (b) SUPERVISORY ACTIONS.—Section 1365 of the  
2 Housing and Community Development Act of 1992 (12  
3 U.S.C. 4615) is amended—

4 (1) in subsection (a)—

5 (A) by redesignating paragraphs (1) and  
6 (2) as paragraphs (2) and (3), respectively;

7 (B) by inserting before paragraph (2) the  
8 following paragraph:

9 “(1) REQUIRED MONITORING.—The Board  
10 shall—

11 “(A) closely monitor the condition of any  
12 undercapitalized enterprise;

13 “(B) closely monitor compliance with the  
14 capital restoration plan, restrictions, and re-  
15 quirements imposed under this section; and

16 “(C) periodically review the plan, restric-  
17 tions, and requirements applicable to the under-  
18 capitalized enterprise to determine whether the  
19 plan, restrictions, and requirements are achiev-  
20 ing the purpose of this section.”; and

21 (C) by inserting at the end the following  
22 new paragraphs:

23 “(4) RESTRICTION OF ASSET GROWTH.—An  
24 undercapitalized enterprise shall not permit its aver-  
25 age total assets during any calendar quarter to ex-

1       ceed its average total assets during the preceding  
2       calendar quarter unless—

3               “(A) the Board has accepted the enter-  
4       prise’s capital restoration plan;

5               “(B) any increase in total assets is con-  
6       sistent with the plan; and

7               “(C) the enterprise’s ratio of tangible eq-  
8       uity to assets increases during the calendar  
9       quarter at a rate sufficient to enable the enter-  
10      prise to become adequately capitalized within a  
11      reasonable time.

12              “(5) PRIOR APPROVAL OF ACQUISITIONS AND  
13      ISSUANCE OF NEW PRODUCTS.—An undercapitalized  
14      enterprise shall not, directly or indirectly, acquire  
15      any interest in any entity or issue a new product  
16      unless—

17              “(A) the Board has accepted the enter-  
18      prise’s capital restoration plan, the enterprise is  
19      implementing the plan, and the Board deter-  
20      mines that the proposed action is consistent  
21      with and will further the achievement of the  
22      plan; or

23              “(B) the Board determines that the pro-  
24      posed action will further the purpose of this  
25      section.”; and

1           (2) in the subsection heading for subsection (b),  
 2           by striking “FROM UNDERCAPITALIZED TO SIGNIFI-  
 3           CANTLY UNDERCAPITALIZED”;

4           (3) by redesignating subsection (c) (as amended  
 5           by subsection (a) of this section) as subsection (d);  
 6           and

7           (4) by inserting after subsection (b) the fol-  
 8           lowing new subsection:

9           “(c) OTHER DISCRETIONARY SAFEGUARDS.—The  
 10          Board may take, with respect to an undercapitalized en-  
 11          terprise, any of the actions authorized to be taken under  
 12          section 1366 with respect to a significantly undercapital-  
 13          ized enterprise, if the Board determines that such actions  
 14          are necessary to carry out the purpose of this subtitle.”.

15       **SEC. 133. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFI-**  
 16                               **CANTLY UNDERCAPITALIZED ENTERPRISES.**

17          Section 1366 of the Housing and Community Devel-  
 18          opment Act of 1992 (12 U.S.C. 4616) is amended—

19               (1) in subsection (b)—

20                       (A) in the subsection heading, by striking  
 21                       “DISCRETIONARY SUPERVISORY ACTIONS” and  
 22                       inserting “SPECIFIC ACTIONS”;

23                       (B) in the matter preceding paragraph (1),  
 24                       by striking “may, at any time, take any” and

1 inserting “shall carry out this section by taking,  
2 at any time, 1 or more”;

3 (C) by redesignating paragraphs (5) and  
4 (6) as paragraphs (6) and (7), respectively;

5 (D) by inserting after paragraph (4) the  
6 following new paragraph:

7 “(5) IMPROVEMENT OF MANAGEMENT.—Take  
8 one or more of the following actions:

9 “(A) NEW ELECTION OF BOARD.—Order a  
10 new election for the board of directors of the  
11 enterprise.

12 “(B) DISMISSAL OF DIRECTORS OR EXECU-  
13 TIVE OFFICERS.—Require the enterprise to dis-  
14 miss from office any director or executive offi-  
15 cer who had held office for more than 180 days  
16 immediately before the enterprise became  
17 undercapitalized. Dismissal under this subpara-  
18 graph shall not be construed to be a removal  
19 pursuant to the Board’s enforcement powers  
20 provided in section 1377.

21 “(C) EMPLOY QUALIFIED EXECUTIVE OF-  
22 FICERS.—Require the enterprise to employ  
23 qualified executive officers (who, if the Board so  
24 specifies, shall be subject to approval by the  
25 Board).”; and



1 (E) by inserting at the end the following  
2 new paragraph:

3 “(8) OTHER ACTION.—Require the enterprise  
4 to take any other action that the Board determines  
5 will better carry out the purpose of this section than  
6 any of the actions specified in this paragraph.”;

7 (2) by redesignating subsection (c) as sub-  
8 section (d); and

9 (3) by inserting after subsection (b) the fol-  
10 lowing new subsection:

11 “(c) RESTRICTION ON COMPENSATION OF EXECU-  
12 TIVE OFFICERS.—An enterprise that is classified as sig-  
13 nificantly undercapitalized may not, without prior written  
14 approval by the Board—

15 “(A) pay any bonus to any executive offi-  
16 cer; or

17 “(B) provide compensation to any execu-  
18 tive officer at a rate exceeding that officer’s av-  
19 erage rate of compensation (excluding bonuses,  
20 stock options, and profit sharing) during the 12  
21 calendar months preceding the calendar month  
22 in which the enterprise became undercapital-  
23 ized.”.

1 **SEC. 134. RECEIVERSHIP.**

2 Section 1368 of the Housing and Community Devel-  
3 opment Act of 1992 (12 U.S.C. 4618) is amended to read  
4 as follows:

5 **“SEC. 1368. APPOINTMENT OF RECEIVERS**

6 **“(a) APPOINTMENT.—**

7 **“(1) AUTHORITY.—**Upon a determination that  
8 an enterprise is critically undercapitalized and a de-  
9 termination that the enterprise meets such other  
10 conditions for taking action pursuant to this sub-  
11 section as the Board shall by regulation establish,  
12 the Board may, notwithstanding section 1367(a)(1),  
13 appoint a receiver for the enterprise in accordance  
14 with this section and in lieu of appointment of a  
15 conservator pursuant to section 1367. If the Board  
16 takes action pursuant to this subsection, the Board  
17 shall appoint the receiver not later than 30 days  
18 after providing notice under paragraph (2) of this  
19 subsection.

20 **“(2) NOTICE.—**Upon making a determination  
21 under paragraph (1) to appoint a receiver for an en-  
22 terprise, the Board shall provide written notice to  
23 the enterprise, the Committee on Financial Services  
24 of the House of Representatives, and the Committee  
25 on Banking, Housing, and Urban Affairs of the  
26 Senate—

1           “(A) that a receiver will be appointed for  
2           the enterprise;

3           “(B) stating the reasons for the appoint-  
4           ment of the receiver; and

5           “(C) identifying the person or govern-  
6           mental agency that the Board intends to ap-  
7           point as a receiver.

8           “(3) QUALIFICATIONS.—The receiver shall be—

9           “(A) the Board or any other governmental  
10          agency; or

11          “(B) any person that—

12                  “(i) has no claim against, or financial  
13                  interest in, the enterprise or other basis for  
14                  a conflict of interest; and

15                  “(ii) has the financial and manage-  
16                  ment expertise necessary to carry out the  
17                  duties under subsection (c).

18          “(b) JUDICIAL REVIEW.—The provisions of section  
19 1369(b) shall apply to the appointment of a receiver pur-  
20 suant to this section to the same extent that such provi-  
21 sions apply to the appointment of a conservator pursuant  
22 to this subtitle.

23          “(c) DUTIES.—A receiver appointed pursuant to this  
24 section shall be appointed for the purpose, and shall have  
25 the duty, of liquidating or winding up the affairs of the

1 enterprise, in accordance with such regulations as the  
2 Board may issue.

3       “(d) REPLACEMENT, POWERS, LIABILITY PROTEC-  
4 TION.—The provisions of subsections (c) and (d) of section  
5 1369, section 1369A, and section 1369B shall apply to  
6 a receiver appointed pursuant to this section to the same  
7 extent that such provisions apply to a conservator ap-  
8 pointed pursuant to this subtitle. In addition to any pow-  
9 ers under section 1369A, a receiver appointed pursuant  
10 to this section shall have such powers with respect to an  
11 enterprise, as the Board may by regulation provide, that  
12 the Federal Deposit Insurance Corporation has under sec-  
13 tion 11 of the Federal Deposit Insurance Act (12 U.S.C.  
14 1821) with respect to a insured depository institution  
15 when acting as a receiver under such section.”.

## 16       **Subtitle C—Enforcement Actions**

### 17       **SEC. 151. CEASE-AND-DESIST PROCEEDINGS.**

18       Section 1371 of the Housing and Community Devel-  
19 opment Act of 1992 (12 U.S.C. 4631) is amended—

20               (1) by striking subsections (a) and (b) and in-  
21 serting the following new subsections:

22       “(a) ISSUANCE FOR UNSAFE OR UNSOUND PRAC-  
23 TICES AND VIOLATIONS OF RULES OR LAWS.—If, in the  
24 opinion of the Board, an enterprise or any enterprise-af-  
25 filiated party is engaging or has engaged, or the Board

1 has reasonable cause to believe that the enterprise or any  
2 enterprise-affiliated party is about to engage, in an unsafe  
3 or unsound practice in conducting the business of the en-  
4 terprise or is violating or has violated, or the Board has  
5 reasonable cause to believe that the enterprise or any en-  
6 terprise-affiliated party is about to violate, a law, rule, or  
7 regulation, or any condition imposed in writing by the  
8 Board in connection with the granting of any application  
9 or other request by the enterprise or any written agree-  
10 ment entered into with the Board, the Board may issue  
11 and serve upon the enterprise or such party a notice of  
12 charges in respect thereof. The Board may not enforce  
13 compliance with any housing goal established under sub-  
14 part B of part 2 of subtitle A of this title, with section  
15 1336 or 1337 of this title, with subsection (m) or (n) of  
16 section 309 of the Federal National Mortgage Association  
17 Charter Act (12 U.S.C. 1723a(m), (n)), or with subsection  
18 (e) or (f) of section 307 of the Federal Home Loan Mort-  
19 gage Corporation Act (12 U.S.C. 1456(e), (f)).

20 “(b) ISSUANCE FOR UNSATISFACTORY RATING.—If  
21 an enterprise receives, in its most recent report of exam-  
22 ination, a less-than-satisfactory rating for asset quality,  
23 management, earnings, or liquidity, the Board may (if the  
24 deficiency is not corrected) deem the enterprise to be en-

1 gaging in an unsafe or unsound practice for purposes of  
 2 this subsection.”; and

3 (2) in subsection (c)(2), by striking “or direc-  
 4 tor” and inserting “director, or enterprise-affiliated  
 5 party”.

6 **SEC. 152. TEMPORARY CEASE-AND-DESIST PROCEEDINGS.**

7 Section 1372 of the Housing and Community Devel-  
 8 opment Act of 1992 (12 U.S.C. 4632) is amended—

9 (1) by striking subsection (a) and inserting the  
 10 following new subsection:

11 “(a) GROUNDS FOR ISSUANCE.—Whenever the Board  
 12 determines that the violation or threatened violation or the  
 13 unsafe or unsound practice or practices specified in the  
 14 notice of charges served upon the enterprise or any enter-  
 15 prise-affiliated party pursuant to section 1371(a), or the  
 16 continuation thereof, is likely to cause insolvency or sig-  
 17 nificant dissipation of assets or earnings of the enterprise,  
 18 or is likely to weaken the condition of the enterprise prior  
 19 to the completion of the proceedings conducted pursuant  
 20 to sections 1371 and 1373, the Board may issue a tem-  
 21 porary order requiring the enterprise or such party to  
 22 cease and desist from any such violation or practice and  
 23 to take affirmative action to prevent or remedy such insol-  
 24 vency, dissipation, condition, or prejudice pending comple-

1 tion of such proceedings. Such order may include any re-  
 2 quirement authorized under subsection 1371(d).”;

3 (2) in subsection (b), by striking “or director”  
 4 and inserting “director, or enterprise-affiliated  
 5 party”;

6 (3) in subsection (d), striking “or director” and  
 7 inserting “director, or enterprise-affiliated party”;  
 8 and

9 (4) by striking subsection (e) and in inserting  
 10 the following new subsection:

11 “(e) ENFORCEMENT.—In the case of violation or  
 12 threatened violation of, or failure to obey, a temporary  
 13 cease-and-desist order issued pursuant to this section, the  
 14 Board may apply to the United States District Court for  
 15 the District of Columbia or the United States district  
 16 court within the jurisdiction of which the headquarters of  
 17 the enterprise is located, for an injunction to enforce such  
 18 order, and, if the court determines that there has been  
 19 such violation or threatened violation or failure to obey,  
 20 it shall be the duty of the court to issue such injunction.”.

21 **SEC. 153. REMOVAL AND PROHIBITION AUTHORITY.**

22 (a) IN GENERAL.—Subtitle C of title XIII of the  
 23 Housing and Community Development Act of 1992 is  
 24 amended—

1           (1) by redesignating sections 1377 through  
2       1379B (12 U.S.C. 4637–41) as sections 1379  
3       through 1379D, respectively; and

4           (2) by inserting after section 1376 (12 U.S.C.  
5       4636) the following new section:

6       **“SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.**

7           “(a) AUTHORITY TO ISSUE ORDER.—Whenever the  
8       Board determines that—

9           “(1) any enterprise-affiliated party has, directly  
10       or indirectly—

11           “(A) violated—

12           “(i) any law or regulation;

13           “(ii) any cease-and-desist order which  
14       has become final;

15           “(iii) any condition imposed in writing  
16       by the Board in connection with the grant  
17       of any application or other request by such  
18       enterprise; or

19           “(iv) any written agreement between  
20       such enterprise and the Board;

21           “(B) engaged or participated in any unsafe  
22       or unsound practice in connection with any en-  
23       terprise; or



1           “(C) committed or engaged in any act,  
2           omission, or practice which constitutes a breach  
3           of such party’s fiduciary duty;

4           “(2) by reason of the violation, practice, or  
5           breach described in any subparagraph of paragraph  
6           (1)—

7           “(A) such enterprise has suffered or will  
8           probably suffer financial loss or other damage;  
9           or

10           “(B) such party has received financial gain  
11           or other benefit by reason of such violation,  
12           practice, or breach; and

13           “(3) such violation, practice, or breach—

14           “(A) involves personal dishonesty on the  
15           part of such party; or

16           “(B) demonstrates willful or continuing  
17           disregard by such party for the safety or sound-  
18           ness of such enterprise,

19 the Board may serve upon such party a written notice of  
20 the Board’s intention to remove such party from office or  
21 to prohibit any further participation by such party, in any  
22 manner, in the conduct of the affairs of any enterprise.

23           “(b) SUSPENSION ORDER.—

24           “(1) SUSPENSION OR PROHIBITION AUTHOR-  
25           ITY.—If the Board serves written notice under sub-

1 section (a) to any enterprise-affiliated party of the  
2 Board's intention to issue an order under such sub-  
3 section, the Board may suspend such party from of-  
4 fice or prohibit such party from further participation  
5 in any manner in the conduct of the affairs of the  
6 enterprise, if the Board—

7 “(A) determines that such action is nec-  
8 essary for the protection of the enterprise; and

9 “(B) serves such party with written notice  
10 of the suspension order.

11 “(2) EFFECTIVE PERIOD.—Any suspension  
12 order issued under subsection (a)—

13 “(A) shall become effective upon service;  
14 and

15 “(B) unless a court issues a stay of such  
16 order under subsection (g) of this section, shall  
17 remain in effect and enforceable until—

18 “(i) the date the Board dismisses the  
19 charges contained in the notice served  
20 under subsection (a) with respect to such  
21 party; or

22 “(ii) the effective date of an order  
23 issued by the Board to such party under  
24 subsection (a).

1           “(3) COPY OF ORDER.—If the Board issues a  
2           suspension order under subsection (a) to any enter-  
3           prise-affiliated party, the Board shall serve a copy of  
4           such order on any enterprise with which such party  
5           is affiliated at the time such order is issued.

6           “(c) NOTICE, HEARING, AND ORDER.—A notice of  
7           intention to remove an enterprise-affiliated party from of-  
8           fice or to prohibit such party from participating in the  
9           conduct of the affairs of an enterprise shall contain a  
10          statement of the facts constituting grounds for such ac-  
11          tion, and shall fix a time and place at which a hearing  
12          will be held on such action. Such hearing shall be fixed  
13          for a date not earlier than 30 days nor later than 60 days  
14          after the date of service of such notice, unless an earlier  
15          or a later date is set by the Board at the request of (1)  
16          such party, and for good cause shown, or (2) the Attorney  
17          General of the United States. Unless such party shall ap-  
18          pear at the hearing in person or by a duly authorized rep-  
19          resentative, such party shall be deemed to have consented  
20          to the issuance of an order of such removal or prohibition.  
21          In the event of such consent, or if upon the record made  
22          at any such hearing the Board shall find that any of the  
23          grounds specified in such notice have been established, the  
24          Board may issue such orders of suspension or removal  
25          from office, or prohibition from participation in the con-

1 duct of the affairs of the enterprise, as it may deem appro-  
2 priate. Any such order shall become effective at the expira-  
3 tion of 30 days after service upon such enterprise and such  
4 party (except in the case of an order issued upon consent,  
5 which shall become effective at the time specified therein).  
6 Such order shall remain effective and enforceable except  
7 to such extent as it is stayed, modified, terminated, or set  
8 aside by action of the Board or a reviewing court.

9 “(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVI-  
10 TIES.—Any person subject to an order issued under this  
11 section shall not—

12 “(1) participate in any manner in the conduct  
13 of the affairs of any enterprise;

14 “(2) solicit, procure, transfer, attempt to trans-  
15 fer, vote, or attempt to vote any proxy, consent, or  
16 authorization with respect to any voting rights in  
17 any enterprise;

18 “(3) violate any voting agreement previously  
19 approved by the Board; or

20 “(4) vote for a director, or serve or act as an  
21 enterprise-affiliated party.

22 “(e) INDUSTRY-WIDE PROHIBITION.—

23 “(1) IN GENERAL.—Except as provided in sub-  
24 paragraph (2), any person who, pursuant to an  
25 order issued under subsection (h), has been removed

1 or suspended from office in an enterprise or prohib-  
2 ited from participating in the conduct of the affairs  
3 of an enterprise may not, while such order is in ef-  
4 fect, continue or commence to hold any office in, or  
5 participate in any manner in the conduct of the af-  
6 fairs of any enterprise.

7 “(2) EXCEPTION IF BOARD PROVIDES WRITTEN  
8 CONSENT.—If, on or after the date an order is  
9 issued under this section which removes or suspends  
10 from office any enterprise-affiliated party or pro-  
11 hibits such party from participating in the conduct  
12 of the affairs of an enterprise, such party receives  
13 the written consent of the Board, the order shall, to  
14 the extent of such consent, cease to apply to such  
15 party with respect to the enterprise described in the  
16 written consent. If the Board grants such a written  
17 consent, it shall publicly disclose such consent.

18 “(3) VIOLATION OF PARAGRAPH (1) TREATED  
19 AS VIOLATION OF ORDER.—Any violation of para-  
20 graph (1) by any person who is subject to an order  
21 described in such subsection shall be treated as a  
22 violation of the order.

23 “(f) APPLICABILITY.—This section shall only apply  
24 to a person who is an individual, unless the Board specifi-

1 cally finds that it should apply to a corporation, firm, or  
 2 other business enterprise.

3 “(g) STAY OF SUSPENSION AND PROHIBITION OF  
 4 ENTERPRISE-AFFILIATED PARTY.—Within 10 days after  
 5 any enterprise-affiliated party has been suspended from  
 6 office and/or prohibited from participation in the conduct  
 7 of the affairs of an enterprise under this section, such  
 8 party may apply to the United States District Court for  
 9 the District of Columbia, or the United States district  
 10 court for the judicial district in which the headquarters  
 11 of the enterprise is located, for a stay of such suspension  
 12 and/or prohibition pending the completion of the adminis-  
 13 trative proceedings pursuant to the notice served upon  
 14 such party under this section, and such court shall have  
 15 jurisdiction to stay such suspension and/or prohibition.

16 “(h) SUSPENSION OR REMOVAL OF ENTERPRISE-AF-  
 17 FILIATED PARTY CHARGED WITH FELONY.—

18 “(1) SUSPENSION OR PROHIBITION.—

19 “(A) IN GENERAL.—Whenever any enter-  
 20 prise-affiliated party is charged in any informa-  
 21 tion, indictment, or complaint, with the commis-  
 22 sion of or participation in a crime involving dis-  
 23 honesty or breach of trust which is punishable  
 24 by imprisonment for a term exceeding one year  
 25 under State or Federal law, the Board may, if

1 continued service or participation by such party  
2 may pose a threat to the enterprise or impair  
3 public confidence in the enterprise, by written  
4 notice served upon such party, suspend such  
5 party from office or prohibit such party from  
6 further participation in any manner in the con-  
7 duct of the affairs of any enterprise.

8 “(B) PROVISIONS APPLICABLE TO NO-  
9 TICE.—

10 “(i) COPY.—A copy of any notice  
11 under paragraph (1)(A) shall also be  
12 served upon the enterprise.

13 “(ii) EFFECTIVE PERIOD.—A suspen-  
14 sion or prohibition under subparagraph (A)  
15 shall remain in effect until the informa-  
16 tion, indictment, or complaint referred to  
17 in such subparagraph is finally disposed of  
18 or until terminated by the Board.

19 “(2) REMOVAL OR PROHIBITION.—

20 “(A) IN GENERAL.—If a judgment of con-  
21 viction or an agreement to enter a pretrial di-  
22 version or other similar program is entered  
23 against an enterprise-affiliated party in connec-  
24 tion with a crime described in paragraph  
25 (1)(A), at such time as such judgment is not

1 subject to further appellate review, the Board  
2 may, if continued service or participation by  
3 such party may pose a threat to the enterprise  
4 or impair public confidence in the enterprise,  
5 issue and serve upon such party an order re-  
6 moving such party from office or prohibiting  
7 such party from further participation in any  
8 manner in the conduct of the affairs of the en-  
9 terprise without the prior written consent of the  
10 Board.

11 “(B) PROVISIONS APPLICABLE TO  
12 ORDER.—

13 “(i) COPY.—A copy of any order  
14 under paragraph (2)(A) shall also be  
15 served upon the enterprise, whereupon the  
16 enterprise-affiliated party who is subject to  
17 the order (if a director or an officer) shall  
18 cease to be a director or officer of such en-  
19 terprise.

20 “(ii) EFFECT OF ACQUITTAL.—A find-  
21 ing of not guilty or other disposition of the  
22 charge shall not preclude the Board from  
23 instituting proceedings after such finding  
24 or disposition to remove such party from  
25 office or to prohibit further participation in



1 enterprise affairs pursuant to subsections  
2 (a), (d), or (e) of this section.

3 “(iii) EFFECTIVE PERIOD.—Any no-  
4 tice of suspension or order of removal  
5 issued under this subsection shall remain  
6 effective and outstanding until the comple-  
7 tion of any hearing or appeal authorized  
8 under paragraph (4) unless terminated by  
9 the Board.

10 “(3) AUTHORITY OF REMAINING BOARD MEM-  
11 BERS.—If at any time, because of the suspension of  
12 one or more directors pursuant to this section, there  
13 shall be on the board of directors of an enterprise  
14 less than a quorum of directors not so suspended, all  
15 powers and functions vested in or exercisable by  
16 such board shall vest in and be exercisable by the di-  
17 rector or directors on the board not so suspended,  
18 until such time as there shall be a quorum of the  
19 board of directors. In the event all of the directors  
20 of an enterprise are suspended pursuant to this sec-  
21 tion, the Board shall appoint persons to serve tem-  
22 porarily as directors in their place and stead pending  
23 the termination of such suspensions, or until such  
24 time as those who have been suspended, cease to be

1 directors of the enterprise and their respective suc-  
2 cessors take office.

3 “(4) HEARING REGARDING CONTINUED PAR-  
4 TICIPATION.—Within 30 days from service of any  
5 notice of suspension or order of removal issued pur-  
6 suant to paragraph (1) or (2) of this subsection, the  
7 enterprise-affiliated party concerned may request in  
8 writing an opportunity to appear before the Board  
9 to show that the continued service to or participation  
10 in the conduct of the affairs of the enterprise by  
11 such party does not, or is not likely to, pose a threat  
12 to the interests of the enterprise or threaten to im-  
13 pair public confidence in the enterprise. Upon re-  
14 ceipt of any such request, the Board shall fix a time  
15 (not more than 30 days after receipt of such re-  
16 quest, unless extended at the request of such party)  
17 and place at which such party may appear, person-  
18 ally or through counsel, before one or more members  
19 of the Board designated employees of the Board to  
20 submit written materials (or, at the discretion of the  
21 Board, oral testimony) and oral argument. Within  
22 60 days of such hearing, the Board shall notify such  
23 party whether the suspension or prohibition from  
24 participation in any manner in the conduct of the af-  
25 fairs of the enterprise will be continued, terminated,

1 or otherwise modified, or whether the order remov-  
2 ing such party from office or prohibiting such party  
3 from further participation in any manner in the con-  
4 duct of the affairs of the enterprise will be rescinded  
5 or otherwise modified. Such notification shall con-  
6 tain a statement of the basis for the Board's deci-  
7 sion, if adverse to such party. The Board is author-  
8 ized to prescribe such rules as may be necessary to  
9 effectuate the purposes of this subsection.

10 “(i) HEARINGS AND JUDICIAL REVIEW.—

11 “(1) VENUE AND PROCEDURE.—Any hearing  
12 provided for in this section shall be held in the Dis-  
13 trict of Columbia or in the Federal judicial district  
14 in which the headquarters of the enterprise is lo-  
15 cated, unless the party afforded the hearing consents  
16 to another place, and shall be conducted in accord-  
17 ance with the provisions of chapter 5 of title 5,  
18 United States Code. After such hearing, and within  
19 90 days after the Board has notified the parties that  
20 the case has been submitted to it for final decision,  
21 it shall render its decision (which shall include find-  
22 ings of fact upon which its decision is predicated)  
23 and shall issue and serve upon each party to the  
24 proceeding an order or orders consistent with the  
25 provisions of this section. Judicial review of any

1       such order shall be exclusively as provided in this  
2       subsection. Unless a petition for review is timely  
3       filed in a court of appeals of the United States, as  
4       provided in paragraph (2), and thereafter until the  
5       record in the proceeding has been filed as so pro-  
6       vided, the Board may at any time, upon such notice  
7       and in such manner as it shall deem proper, modify,  
8       terminate, or set aside any such order. Upon such  
9       filing of the record, the Board may modify, termi-  
10      nate, or set aside any such order with permission of  
11      the court.

12           “(2) REVIEW OF ORDER.—Any party to any  
13      proceeding under paragraph (1) may obtain a review  
14      of any order served pursuant to paragraph (1)  
15      (other than an order issued with the consent of the  
16      enterprise or the enterprise-affiliated party con-  
17      cerned, or an order issued under subsection (h) of  
18      this section) by the filing in the United States Court  
19      of Appeals for the District of Columbia Circuit or  
20      court of appeals of the United States for the circuit  
21      in which the headquarters of the enterprise is lo-  
22      cated, within 30 days after the date of service of  
23      such order, a written petition praying that the order  
24      of the Board be modified, terminated, or set aside.  
25      A copy of such petition shall be forthwith trans-

1       mitted by the clerk of the court to the Board, and  
2       thereupon the Board shall file in the court the  
3       record in the proceeding, as provided in section 2112  
4       of title 28, United States Code. Upon the filing of  
5       such petition, such court shall have jurisdiction,  
6       which upon the filing of the record shall (except as  
7       provided in the last sentence of paragraph (1)) be  
8       exclusive, to affirm, modify, terminate, or set aside,  
9       in whole or in part, the order of the Board. Review  
10      of such proceedings shall be had as provided in  
11      chapter 7 of title 5, United States Code. The judg-  
12      ment and decree of the court shall be final, except  
13      that the same shall be subject to review by the Su-  
14      preme Court upon certiorari, as provided in section  
15      1254 of title 28, United States Code.

16           “(3) PROCEEDINGS NOT TREATED AS STAY.—  
17      The commencement of proceedings for judicial re-  
18      view under paragraph (2) shall not, unless specifi-  
19      cally ordered by the court, operate as a stay of any  
20      order issued by the Board.”.

21      (b) CONFORMING AMENDMENT.—Section 1317(f) of  
22      the Housing and Community Development Act of 1992  
23      (12 U.S.C. 4517(f)) is amended by striking “section  
24      1379B” and inserting “section 1379D”.

1 **SEC. 154. ENFORCEMENT AND JURISDICTION.**

2 Section 1375 of the Housing and Community Devel-  
3 opment Act of 1992 (12 U.S.C. 4635) is amended—

4 (1) by striking subsection (a) and inserting the  
5 following new subsection:

6 “(a) ENFORCEMENT.—The Board may in its discre-  
7 tion apply to the United States District Court for the Dis-  
8 trict of Columbia, or the United States district court with-  
9 in the jurisdiction of which the headquarters of the enter-  
10 prise is located, for the enforcement of any effective and  
11 outstanding notice or order issued under this subtitle or  
12 subtitle B, or request that the Attorney General of the  
13 United States bring such an action. Such court shall have  
14 jurisdiction and power to order and require compliance  
15 with such notice or order.”; and

16 (2) in subsection (b), by striking “or 1376” and  
17 inserting “1376, or 1377”

18 **SEC. 155. CIVIL MONEY PENALTIES.**

19 Section 1376 of the Housing and Community Devel-  
20 opment Act of 1992 (12 U.S.C. 4636) is amended—

21 (1) in subsection (a), in the matter preceding  
22 paragraph (1), by striking “or any executive officer  
23 or” and inserting “any executive officer of an enter-  
24 prise, any enterprise-affiliated party, or any”;

25 (2) by striking subsection (b) and inserting the  
26 following new subsection:

1 “(b) AMOUNT OF PENALTY.—

2 “(1) FIRST TIER.—Any enterprise which, or  
3 any enterprise-affiliated party who—

4 “(A) violates any provision of this title, the  
5 Federal National Mortgage Association Charter  
6 Act (12 U.S.C. 1716 et seq.), the Federal  
7 Home Loan Mortgage Corporation Act (12  
8 U.S.C. 1451 et seq.), or any order, condition,  
9 rule, or regulation under any such title or Act,  
10 except that the Board may not enforce compli-  
11 ance with any housing goal established under  
12 subpart B of part 2 of subtitle A of this title,  
13 with section 1336 or 1337 of this title, with  
14 subsection (m) or (n) of section 309 of the Fed-  
15 eral National Mortgage Association Charter Act  
16 (12 U.S.C. 1723a(m), (n)), or with subsection  
17 (e) or (f) of section 307 of the Federal Home  
18 Loan Mortgage Corporation Act (12 U.S.C.  
19 1456(e), (f));

20 “(B) violates any final or temporary order  
21 or notice issued pursuant to this title;

22 “(C) violates any condition imposed in  
23 writing by the Board in connection with the  
24 grant of any application or other request by  
25 such enterprise;

1           “(D) violates any written agreement be-  
2           tween the enterprise and the Board; or

3           “(E) engages in any conduct the Board de-  
4           termines to be an unsafe or unsound practice,  
5           shall forfeit and pay a civil penalty of not more than  
6           \$5,000 for each day during which such violation con-  
7           tinues.

8           “(2) SECOND TIER.—Notwithstanding para-  
9           graph (1)—

10           “(A) if an enterprise, or an enterprise-af-  
11           filiated party—

12                   “(i) commits any violation described  
13                   in any subparagraph of paragraph (1);

14                   “(ii) recklessly engages in an unsafe  
15                   or unsound practice in conducting the af-  
16                   fairs of such enterprise; or

17                   “(iii) breaches any fiduciary duty  
18                   which violation, practice, or breach; and

19           “(B) the violation, practice, or breach—

20                   “(i) is part of a pattern of mis-  
21                   conduct;

22                   “(ii) causes or is likely to cause more  
23                   than a minimal loss to such enterprise; or

24                   “(iii) results in pecuniary gain or  
25                   other benefit to such party,



1 the enterprise or enterprise-affiliated party shall forfeit and pay a civil penalty of not more than  
2 \$25,000 for each day during which such violation,  
3 practice, or breach continues.

4 “(3) THIRD TIER.—Notwithstanding paragraphs (1) and (2), any enterprise which, or any enterprise-affiliated party who—

5 “(A) knowingly—

6 “(i) commits any violation described  
7 in any subparagraph of paragraph (1);

8 “(ii) engages in any unsafe or unsound practice in conducting the affairs of  
9 such enterprise; or

10 “(iii) breaches any fiduciary duty; and

11 “(B) knowingly or recklessly causes a substantial loss to such enterprise or a substantial  
12 pecuniary gain or other benefit to such party by  
13 reason of such violation, practice, or breach,

14 shall forfeit and pay a civil penalty in an amount not  
15 to exceed the applicable maximum amount determined under paragraph (4) for each day during  
16 which such violation, practice, or breach continues.

17 “(4) MAXIMUM AMOUNTS OF PENALTIES FOR  
18 ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—

19 The maximum daily amount of any civil penalty

1       which may be assessed pursuant to paragraph (3)  
 2       for any violation, practice, or breach described in  
 3       such paragraph is—

4               “(A) in the case of any person other than  
 5       an enterprise, an amount not to exceed  
 6       \$1,000,000; and

7               “(B) in the case of any enterprise,  
 8       \$1,000,000.”; and  
 9       (3) in subsection (d)—

10              (A) by striking “or director” each place  
 11       such term appears and inserting “director, or  
 12       enterprise-affiliated party”;

13              (B) by striking “request the Attorney Gen-  
 14       eral of the United States to”;

15              (C) by inserting “, or the United States  
 16       district court within the jurisdiction of which  
 17       the headquarters of the enterprise is located,”  
 18       after “District of Columbia”; and

19              (D) by striking “, or may, under the direc-  
 20       tion and control of the Attorney General, bring  
 21       such an action”.

22   **SEC. 156. CRIMINAL PENALTY.**

23       Subtitle C of title XIII of the Housing and Commu-  
 24       nity Development Act of 1992 (12 U.S.C. 4631 et seq.)  
 25       is amended by inserting after section 1377 (as added by

1 the preceding provisions of this Act) the following new sec-  
 2 tion:

3 **“SEC. 1378. CRIMINAL PENALTY.**

4       “Whoever, being subject to an order in effect under  
 5 section 1377, without the prior written approval of the  
 6 Board, knowingly participates, directly or indirectly, in  
 7 any manner (including by engaging in an activity specifi-  
 8 cally prohibited in such an order) in the conduct of the  
 9 affairs of any enterprise shall, notwithstanding section  
 10 3571 of title 18, be fined not more than \$1,000,000, im-  
 11 prisoned for not more than 5 years, or both.”.

12 **Subtitle D—Reporting Regarding**  
 13 **Enterprises**

14 **SEC. 161. REPORTING REGARDING ENTERPRISES.**

15       Part 3 of subtitle A of the Housing and Community  
 16 Development Act of 1992 is amended—

17           (1) by striking sections 1351, 1352, and 1353  
 18           (Public Law 102–550; 106 Stat. 3969), except the  
 19           provisions of law amended by such sections repealed  
 20           shall not be affected by such repeal; and

21           (2) by striking sections 1354, 1355, and 1356  
 22           (12 U.S.C. 4601–3) and inserting the following new  
 23           section:

1 **“SEC. 1351. REPORTS REGARDING ENTERPRISE ISSUES**  
2 **AND ACTIVITIES.**

3 “(a) INSURED DEPOSITORY INSTITUTION HOLDINGS  
4 OF ENTERPRISE DEBT AND MORTGAGE-BACKED SECURI-  
5 TIES.—Not later than 180 days after the date of the en-  
6 actment of the Secondary Mortgage Market Enterprises  
7 Regulatory Improvement Act, the Secretary of the Treas-  
8 ury shall submit a report to the Congress regarding—

9 “(1) the extent to which obligations issued or  
10 guaranteed by the enterprises (including mortgage-  
11 backed securities) are held by federally insured de-  
12 pository institutions, including such extent by type  
13 of institution and such extent relative to the institu-  
14 tions’ capital;

15 “(2) the extent to which the unlimited holdings  
16 by federally insured depository institutions of the ob-  
17 ligations of the enterprises could produce systemic  
18 risk issues, particularly for the safety and soundness  
19 of the banking system in the United States, in the  
20 event of default or failure by an enterprise; and

21 “(3) the effects on the enterprises, the banking  
22 industry, and mortgage markets, if prudent limits on  
23 the holdings of enterprise obligations were placed on  
24 federally insured depository institutions.

25 “(b) PORTFOLIO OPERATIONS, RISK MANAGEMENT,  
26 AND MISSION.—Not later than one year after the date of

1 the enactment of the Secondary Mortgage Market Enter-  
2 prises Regulatory Improvement Act, the Board shall sub-  
3 mit a report to the Congress—

4 “(1) describing the holdings of the enterprises  
5 in retained mortgages and repurchased mortgage-  
6 backed securities and the use of derivatives for hedg-  
7 ing purposes;

8 “(2) describing the extent of such holdings rel-  
9 ative to other assets and the risk implications of  
10 such holdings;

11 “(3) containing an analysis of such holdings for  
12 safety and soundness and/or mission compliance pur-  
13 poses; and

14 “(4) containing an assessment of whether such  
15 holdings and other assets of the enterprises fulfill  
16 the mission purposes of the enterprises under the  
17 Federal National Mortgage Association Charter Act  
18 and the Federal Home Loan Mortgage Corporation  
19 Act.

20 The Board shall consult with the Comptroller General of  
21 the United States in preparing the report under this sub-  
22 section and in conducting any research, analyses, and as-  
23 sessments for the report.

24 “(c) DEBT ISSUANCES.—Not later than 270 days  
25 after the date of the enactment of the Secondary Mortgage

1 Market Enterprises Regulatory Improvement Act, the Sec-  
2 retary of the Treasury shall submit a report to the Con-  
3 gress regarding—

4 “(1) the extent of outstanding obligations of the  
5 enterprises and the rate of growth of such obliga-  
6 tions; and

7 “(2) an analysis of whether debt issuances  
8 should be limited or reduced if an enterprise is not  
9 operating in a safe and sound manner and/or not  
10 complying with its mission, or if an enterprise fails  
11 to maintain a certain credit rating and/or debt rat-  
12 ing.

13 “(d) TREASURY LINE OF CREDIT.—Not later than  
14 one year after the date of the enactment of the Secondary  
15 Mortgage Market Enterprises Regulatory Improvement  
16 Act, the Secretary of the Treasury shall submit a report  
17 to the Congress regarding the purposes of the authority  
18 of the Secretary of the Treasury to purchase the debt obli-  
19 gations of the enterprises. The report shall assess the de-  
20 sirability of limiting such authority in certain cir-  
21 cumstances or eliminating such authority.

22 “(e) VOLUNTARY AGREEMENT.—The Board shall  
23 submit a report to the Congress annually, on fiscal year  
24 basis, regarding the progress in implementing the commit-  
25 ments announced by the enterprises on October 19, 2000,

1 regarding capitalization, disclosure, and market discipline,  
2 namely—

3 “(1) to issue subordinated debt;

4 “(2) to obtain and disclose an annual credit  
5 rating;

6 “(3) to disclose interest rate risk;

7 “(4) to disclose credit risk;

8 “(5) to maintain greater liquidity; and

9 “(6) to perform and disclose an interim risk-  
10 based capital stress test.

11 The report shall determine whether the intended purposes  
12 of this agreement, particularly to reduce systemic risk,  
13 have been achieved, whether changes should be made to  
14 the agreement, and whether any action should be taken  
15 to ensure compliance with the agreement by the enter-  
16 prises. Each report under this subsection for a fiscal year  
17 shall be submitted not later than the December 31 first  
18 occurring after the conclusion of such fiscal year.

19 “(f) RECOMMENDATIONS.—Each report submitted  
20 pursuant to this section shall include specific recommenda-  
21 tions of appropriate policies, limitations, regulations, legis-  
22 lation, or other actions to deal appropriately and effec-  
23 tively with the issues addressed by such report.”.

## 1       **Subtitle E—General Provisions**

### 2       **SEC. 171. CONFORMING AND TECHNICAL AMENDMENTS.**

3           (a) AMENDMENTS TO 1992 ACT.—Title XIII of the  
4       Housing and Community Development Act of 1992 (12  
5       U.S.C. 4501 et seq.), as amended by the preceding provi-  
6       sions of this Act, is further amended—

7                       (1) in section 1315 (12 U.S.C. 4515)—

8                               (A) in subsection (a)—

9                                       (i) in the subsection heading, by strik-  
10                                       ing “OFFICE PERSONNEL” and inserting  
11                                       “IN GENERAL”;

12                                       (ii) by striking “The” and inserting  
13                                       “Subject to title II of the Secondary Mort-  
14                                       gage Market Enterprises Regulatory Im-  
15                                       provement Act, the”; and

16                                       (iii) by striking “Director and the Of-  
17                                       fice. Officers” and inserting “Board, with  
18                                       respect to regulation and supervision of the  
19                                       enterprises. Such officers”;

20                               (B) in subsection (b)—

21                                       (i) by striking “the Board of Gov-  
22                                       ernors of the Federal Reserve System,”  
23                                       and

24                                       (ii) by inserting “, and with com-  
25                                       pensation of other officers and employees



1 of the Board of Governors of the Federal  
2 Reserve System” before the period at the  
3 end;

4 (C) in subsection (c), by inserting “, with  
5 respect to regulation and supervision of the en-  
6 terprises” before the first comma;

7 (D) in subsection (d), by striking “Office”  
8 and inserting “Secretary pursuant to subpart B  
9 of part 2 of this subtitle, subsections (m) and  
10 (n) of section 309 of the Federal National  
11 Mortgage Association Charter Act, and sub-  
12 sections (e) and (f) of section 307 of the Fed-  
13 eral Home Loan Mortgage Corporation Act;

14 (E) in subsection (e), by inserting “, with  
15 respect to regulation and supervision of the en-  
16 terprises” before the period at the end; and

17 (F) by striking subsection (f);

18 (2) in section 1317(c) (12 U.S.C. 4517(c)), by  
19 striking “the Board of Governors of the Federal Re-  
20 serve System,”;

21 (3) in section 1319A (12 U.S.C. 4520)—

22 (A) by striking “(a) IN GENERAL.—”; and

23 (B) by striking subsection (b);

24 (4) in section 1319C (12 U.S.C. 4522)—

1 (A) in subsection (a)(1), by inserting  
 2 “under this title” after “redressed”; and

3 (B) in subsection (b), by inserting “under  
 4 this title” after “issued”;

5 (5) in section 1319D (12 U.S.C. 4523), by in-  
 6 serting “to conduct duties relating to the regulation  
 7 and supervision of the enterprises” before the second  
 8 comma;

9 (6) in section 1319E (12 U.S.C. 4524)—

10 (A) by inserting “relating to regulation  
 11 and supervision of the enterprises” before “in  
 12 accordance with”; and

13 (B) by inserting “in functions relating to  
 14 the regulation and supervision of the enter-  
 15 prises” before “shall be made available”;

16 (7) in section 1319F (12 U.S.C. 4525), by  
 17 striking “Code” and all that follows through “agen-  
 18 cies” and inserting “Code, the Board, to the extent  
 19 only of its functions, activities, and employees in-  
 20 volved in the regulation and supervision of the enter-  
 21 prises, shall be considered an agency”;

22 (8) in the section heading for section 1328, by  
 23 striking “**SECRETARY**” and inserting “**BOARD OF**  
 24 **GOVERNORS**”;

25 (9) in section 1361 (12 U.S.C. 4611)—

1 (A) in subsection (e)—

2 (i) in paragraph (1), by striking the  
3 first sentence and inserting the following  
4 new sentence: “The Board shall establish  
5 the risk-based capital test under this sec-  
6 tion by regulation.”; and

7 (ii) in paragraph (2), by striking “in-  
8 dividual other than the Director to apply  
9 the test in the same manner as the Direc-  
10 tor” and inserting “individual (who is not  
11 a member of the Board) to apply the test  
12 in the same manner as the Board”; and

13 (B) in subsection (f), by striking “the Sec-  
14 retary, the Board of Governors of the Federal  
15 Reserve System”; and

16 (10) in section 1364(c) (12 U.S.C. 4614(c)), by  
17 striking the last sentence;

18 (11) in section 1367(a)(2) (12 U.S.C.  
19 4617(a)(2)), by striking “with the written concu-  
20 rence of the Secretary of the Treasury,”;

21 (12) in section 1369A (12 U.S.C. 4620)—

22 (A) in the subsection heading for sub-  
23 section (c) by striking “DIRECTOR” and insert-  
24 ing “BOARD”; and

1 (B) in subsection (i), by inserting “having  
2 duties relating to regulation and supervision of  
3 the enterprises” before the period at the end;

4 (13) in the section heading for section 1369D  
5 (12 U.S.C. 4623), by striking “**DIRECTOR**” and in-  
6 serting “**BOARD**”;

7 (14) in the subsection heading for subsection  
8 (e) of section 1376 (12 U.S.C. 4636(e)), by striking  
9 “DIRECTOR” and inserting “BOARD”;

10 (15) by striking section 1383;

11 (16) by striking “Director” each place such  
12 term appears (except the second place such term ap-  
13 pears in each of paragraphs (1) and (2) of section  
14 1316(g), the third place such term appears in sec-  
15 tion 1317(c), in section 1361(a)(3)(C), and the sec-  
16 ond and third places such term appears in sub-  
17 section (f) of section 1361) and inserting “Board”;

18 (17) by striking “Director’s” each place such  
19 term appears and inserting “Board’s”;

20 (18) by striking “Office” each place such term  
21 appears (except each place such term appears in sec-  
22 tion 1315(b), in section 1316(g)(1), the second place  
23 such term appears in section 1316(g)(2), in section  
24 1317(c), in section 1334(d)(3), in section

1       1361(a)(3)(C), and each place such term appears in  
2       section 1361(f)) and inserting “Board”;

3           (19) by striking “Committee on Banking, Fi-  
4       nance and Urban Affairs” and inserting “Committee  
5       on Financial Services” each place such term appears  
6       in     sections     1319B,     1319G(c),     1328(a),  
7       1336(b)(3)(C), 1337, and 1369(a)(3); and

8           (20) by striking “Secretary” and inserting  
9       “Board” each place such term appears in —

10           (A) part 1 of subtitle A;

11           (B) subpart A of part 2 of subtitle A (ex-  
12       cept in sections 1324 and 1325);

13           (C) subtitle B (except in section  
14       1361(d)(1)); and

15           (D) subtitle C.

16       (b) AMENDMENTS TO FANNIE MAE CHARTER ACT.—

17       The Federal National Mortgage Association Charter Act  
18       (12 U.S.C. 1716 et seq.) is amended—

19           (1) by striking “Director of the Office of Fed-  
20       eral Housing Enterprise Oversight of the Depart-  
21       ment of Housing and Urban Development” each  
22       place such term appears, and inserting “Board of  
23       Governors of the Federal Reserve System”, in—

24           (A) section 303(c)(2) (12 U.S.C.  
25       1718(c)(2));

1 (B) section 309(d)(3)(B) (12 U.S.C.  
2 1723a(d)(3)(B)); and

3 (C) section 309(k)(1);  
4 (2) in section 309 (12 U.S.C. 1723a)—

5 (A) in the second sentence of subsection  
6 (d)(3)(B), by striking “Director” each place  
7 such term appears and inserting “Board of  
8 Governors”;

9 (B) in subsection (k)—

10 (i) in paragraph (1), by striking “Di-  
11 rector shall” and inserting “Board of Gov-  
12 ernors shall”; and

13 (ii) in paragraphs (2) and (3), by  
14 striking “Director” each place such term  
15 appears and inserting “Board of Governors  
16 of the Federal Reserve System”; and

17 (C) in subsection (l)(2), by striking “Di-  
18 rector” and inserting “Board of Governors of  
19 the Federal Reserve System”; and  
20 (3) in section 309(n)—

21 (A) in paragraph (1), by inserting “the  
22 Board of Governors of the Federal Reserve Sys-  
23 tem,” after “House of Representatives,”; and

1 (B) in paragraph (3)(B), by striking “Sec-  
 2 retary” and inserting “Board of Governors of  
 3 the Federal Reserve System”.

4 (c) AMENDMENTS TO FREDDIE MAC ACT.—The Fed-  
 5 eral Home Loan Mortgage Corporation Act is amended—  
 6 (1) by striking “Director of the Office of Fed-  
 7 eral Housing Enterprise Oversight of the Depart-  
 8 ment of Housing and Urban Development” each  
 9 place such term appears, and inserting “Board of  
 10 Governors of the Federal Reserve System”, in—

11 (A) section 303(b)(2) (12 U.S.C.  
 12 1452(b)(2));

13 (B) section 303(h)(2) (12 U.S.C.  
 14 1452(h)(2)); and

15 (C) section 307(c)(1) (12 U.S.C.  
 16 1456(c)(1));

17 (2) in the second sentence of section 303(h)(2)  
 18 (12 U.S.C. 1452(h)(2)), by striking “Director” each  
 19 place such term appears and inserting “Board of  
 20 Governors”;

21 (3) in section 306(i) (12 U.S.C. 1455(i))—

22 (A) by striking “section 1316(c)” and in-  
 23 serting “section 306(c)”; and

24 (B) by striking “section 106” and insert-  
 25 ing “section 1316”; and

1 (4) in section 307 (12 U.S.C. 1456)—

2 (A) in subsection (c)(1), by striking “Di-  
3 rector shall” and inserting “Board of Governors  
4 shall”;

5 (B) in subsection (c), in paragraphs (2)  
6 and (3), by striking “Director” each place such  
7 term appears and inserting “Board of Gov-  
8 ernors of the Federal Reserve System”;

9 (C) in subsection (d)(2), by striking “Di-  
10 rector” and inserting “Board of Governors of  
11 the Federal Reserve System”; and

12 (D) in subsection (f)—

13 (i) in paragraph (1), by inserting “the  
14 Board of Governors of the Federal Reserve  
15 System,” after “House of Representa-  
16 tives,”;

17 (ii) in paragraph (3)(B), by striking  
18 “Secretary” and inserting “Board of Gov-  
19 ernors of the Federal Reserve System”.

20 (d) AMENDMENT TO TITLE 18, UNITED STATES  
21 CODE.—Section 1905 of title 18, United States Code, is  
22 amended by striking “Office of Federal Housing Enter-  
23 prise Oversight” and inserting “Board of Governors of the  
24 Federal Reserve System in its capacity under title XIII



1 of the Housing and Community Development Act of  
2 1992”.

3 (e) AMENDMENTS TO FLOOD DISASTER PROTECTION  
4 ACT OF 1973.—Section 102(f)(3)(A) of the Flood Dis-  
5 aster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A))  
6 is amended—

7 (1) by striking “Director of the Office of Fed-  
8 eral Housing Enterprise Oversight of the Depart-  
9 ment of Housing and Urban Development” and in-  
10 serting “Board of Governors of the Federal Reserve  
11 System”; and

12 (2) by striking “Director of such Office” and  
13 inserting “Board”.

14 (f) AMENDMENT TO DEPARTMENT OF HOUSING AND  
15 URBAN DEVELOPMENT ACT.—Section 5 of the Depart-  
16 ment of Housing and Urban Development Act (42 U.S.C.  
17 3534) is amended by striking subsection (d).

18 (g) AMENDMENTS TO TITLE 5, UNITED STATES  
19 CODE.—

20 (1) EXECUTIVE SCHEDULE PAY RATE.—Section  
21 5315 of title 5, United States Code, is amended by  
22 striking the item relating to the Director of the Of-  
23 fice of Federal Housing Enterprise Oversight, De-  
24 partment of Housing and Urban Development.

1           (2)     DEFINITION     OF     AGENCY.—Section  
 2     3132(a)(1)(D) of title 5, United States Code, is  
 3     amended by striking “the Office of Federal Housing  
 4     Enterprise Oversight of the Department of Housing  
 5     and Urban Development” and inserting “the Board  
 6     of Governors of the Federal Reserve System, to the  
 7     extent of the duties of such Board relating to regula-  
 8     tion and supervision of the Federal National Mort-  
 9     gage Association and the Federal Home Loan Mort-  
 10    gage Corporation”.

11 **SEC. 172. EFFECTIVE DATE.**

12       Except as specifically provided otherwise in this title,  
 13 the amendments made by this title shall take effect on,  
 14 and shall apply beginning on, the expiration of the 1-year  
 15 period beginning on the date of the enactment of this Act.

16 **TITLE II—TRANSFER OF FUNC-**  
 17 **TIONS,     PERSONNEL,     AND**  
 18 **PROPERTY**

19 **SEC. 201. ABOLISHMENT OF OFHEO.**

20       (a) IN GENERAL.—Effective at the end of the 1-year  
 21 period beginning on the date of the enactment of this Act,  
 22 the Office of Federal Housing Enterprise Oversight of the  
 23 Department of Housing and Urban Development and the  
 24 positions of the Director and Deputy Director of such Of-  
 25 fice are abolished.

1       (b) DISPOSITION OF AFFAIRS.—During the 1-year  
2 period beginning on the date of the enactment of this Act,  
3 the Director of the Office of Federal Housing Enterprise  
4 Oversight shall, solely for the purpose of winding up the  
5 affairs of the Office of Federal Housing Enterprise  
6 Oversight—

7           (1) manage the employees of such Office and  
8       provide for the payment of the compensation and  
9       benefits of any such employee which accrue before  
10      the effective date of the transfer of such employee  
11      pursuant to section 203; and

12          (2) may take any other action necessary for the  
13      purpose of winding up the affairs of the Office.

14      (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—  
15 The amendments made by title I and the abolishment of  
16 the Office of Federal Housing Enterprise Oversight under  
17 subsection (a) of this section may not be construed to af-  
18 fect the status of any employee of such Office as employ-  
19 ees of an agency of the United States for purposes of any  
20 other provision of law before the effective date of the  
21 transfer of any such employee pursuant to section 203.

22      (d) USE OF PROPERTY AND SERVICES.—

23          (1) PROPERTY.—The Chairman of the Board of  
24      Governors of the Federal Reserve System may use  
25      the property of the Office of Federal Housing Enter-

1       prise Oversight to perform functions which have  
2       been transferred to the Board of Governors of the  
3       Federal Reserve System for such time as is reason-  
4       able to facilitate the orderly transfer of functions  
5       transferred pursuant to any other provision of this  
6       Act or any amendment made by this Act to any  
7       other provision of law.

8               (2) AGENCY SERVICES.—Any agency, depart-  
9       ment, or other instrumentality of the United States,  
10      and any successor to any such agency, department,  
11      or instrumentality, which was providing supporting  
12      services to the Office of Federal Housing Enterprise  
13      Oversight before the expiration of the period under  
14      subsection (a) in connection with functions that are  
15      transferred to the Board of Governors of the Fed-  
16      eral Reserve System shall—

17               (A) continue to provide such services, on a  
18              reimbursable basis, until the transfer of such  
19              functions is complete; and

20               (B) consult with any such agency to co-  
21              ordinate and facilitate a prompt and reasonable  
22              transition.

23      (e) SAVINGS PROVISIONS.—

24               (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-  
25      TIONS NOT AFFECTED.—Subsection (a) shall not af-

1       fect the validity of any right, duty, or obligation of  
2       the United States, the Director of the Office of Fed-  
3       eral Housing Enterprise Oversight, or any other per-  
4       son, which—

5               (A) arises under or pursuant to the title  
6       XIII of the Housing and Community Develop-  
7       ment Act of 1992, the Federal National Mort-  
8       gage Association Charter Act, the Federal  
9       Home Loan Mortgage Corporation Act, or any  
10      other provision of law applicable with respect to  
11      such Office; and

12              (B) existed on the day before the abolish-  
13      ment under subsection (a) of this section.

14              (2) CONTINUATION OF SUITS.—No action or  
15      other proceeding commenced by or against the Di-  
16      rector of the Office of Federal Housing Enterprise  
17      Oversight shall abate by reason of the enactment of  
18      this Act, except that the Board of Governors of the  
19      Federal Reserve System shall be substituted for the  
20      Director as a party to any such action or pro-  
21      ceeding.

22   **SEC. 202. CONTINUATION AND COORDINATION OF CERTAIN**  
23                   **REGULATIONS.**

24      All regulations, orders, determinations, and resolu-  
25      tions that—

1           (1) were issued, made, prescribed, or allowed to  
2       become effective by—

3           (A) the Office of Federal Housing Enter-  
4       prise Oversight;

5           (B) the Secretary of Housing and Urban  
6       Development and that relate to the Secretary's  
7       authority under—

8           (i) title XIII of the Housing and Com-  
9       munity Development Act of 1992;

10          (ii) under the Federal National Mort-  
11       gage Association Charter Act, with respect  
12       to the Federal National Mortgage Associa-  
13       tion; or

14          (iii) the Federal Home Loan Mort-  
15       gage Corporation Act; or

16          (C) a court of competent jurisdiction and  
17       that relate to functions transferred by this Act;  
18       and

19          (2) are in effect on the date of the abolishment  
20       under section 201(a) of this Act,

21       shall remain in effect according to the terms of such regu-  
22       lations, orders, determinations, and resolutions and shall  
23       be enforceable by or against the Board of Governors of  
24       the Federal Reserve System until modified, terminated,  
25       set aside, or superseded in accordance with applicable law

1 by such Board, any court of competent jurisdiction, or op-  
2 eration of law.

3 **SEC. 203. TRANSFER AND RIGHTS OF EMPLOYEES OF**  
4 **OFHEO.**

5 (a) TRANSFER.—Each employee of the Office of Fed-  
6 eral Housing Enterprise Oversight shall be transferred to  
7 the Board of Governors of the Federal Reserve System  
8 for employment no later than the date of the abolishment  
9 under section 201(a) of this Act and such transfer shall  
10 be deemed a transfer of function for the purpose of section  
11 3503 of title 5, United States Code.

12 (b) GUARANTEED POSITIONS.—Each employee trans-  
13 ferred under subsection (a) shall be guaranteed a position  
14 with the same status, tenure, grade, and pay as that held  
15 on the day immediately preceding the transfer. Each such  
16 employee holding a permanent position shall not be invol-  
17 untarily separated or reduced in grade or compensation  
18 for 18 months after the date of transfer, except for cause  
19 or, if the employee is a temporary employee, separated in  
20 accordance with the terms of the appointment.

21 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND  
22 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

23 (1) IN GENERAL.—In the case of employees oc-  
24 cupying positions in the excepted service or the Sen-  
25 ior Executive Service, any appointment authority es-

1        tablished pursuant to law or regulations of the Of-  
2        fice of Personnel Management for filling such posi-  
3        tions shall be transferred, subject to paragraph (2).

4            (2) DECLINE OF TRANSFER.—The Board of  
5        Governors of the Federal Reserve System may de-  
6        cline a transfer of authority under paragraph (1)  
7        (and the employees appointed pursuant thereto) to  
8        the extent that such authority relates to positions  
9        excepted from the competitive service because of  
10       their confidential, policy-making, policy-determining,  
11       or policy-advocating character, and noncareer posi-  
12       tions in the Senior Executive Service (within the  
13       meaning of section 3132(a)(7) of title 5, United  
14       States Code).

15        (d) REORGANIZATION.—If the Board of Governors of  
16       the Federal Reserve System determines, after the end of  
17       the 1-year period beginning on the date the transfer of  
18       functions to the Board is completed, that a reorganization  
19       of the combined work force is required, that reorganization  
20       shall be deemed a major reorganization for purposes of  
21       affording affected employees retirement under section  
22       8336(d)(2) or 8414(b)(1)(B) of title 5, United States  
23       Code.

24        (e) EMPLOYEE BENEFIT PROGRAMS.—Any employee  
25       accepting employment with the Board of Governors of the



1 Federal Reserve System as a result of such transfer may  
2 retain for 18 months after the date such transfer occurs  
3 membership in any employee benefit program of the Board  
4 of Governors of the Federal Reserve System or the Office  
5 of Federal Housing Enterprise Oversight, as applicable,  
6 including insurance, to which such employee belongs on  
7 the date of the abolishment under section 201(a) if—

8 (1) the employee does not elect to give up the  
9 benefit or membership in the program; and

10 (2) the benefit or program is continued by the  
11 Board of Governors of the Federal Reserve System.

12 The difference in the costs between the benefits which  
13 would have been provided by such agency and those pro-  
14 vided by this section shall be paid by the Board of Gov-  
15 ernors of the Federal Reserve System. If any employee  
16 elects to give up membership in a health insurance pro-  
17 gram or the health insurance program is not continued  
18 by such Board, the employee shall be permitted to select  
19 an alternate Federal health insurance program within 30  
20 days of such election or notice, without regard to any other  
21 regularly scheduled open season.

22 (f) SENIOR EXECUTIVE SERVICE EMPLOYEES.—A  
23 transferring employee in the Senior Executive Service  
24 shall be placed in a comparable position at the agency or  
25 entity to which such employee is transferred.

1       (g) NOTICE OF POSITIONS.—Transferring employees  
2 shall receive notice of their position assignments not later  
3 than 120 days after the effective date of their transfer.

4 **SEC. 204. TRANSFER OF PROPERTY AND FACILITIES.**

5       Upon the abolishment under section 201(a), all prop-  
6 erty of the Office of Federal Housing Enterprise Oversight  
7 shall transfer to the Board of Governors of the Federal  
8 Reserve System.

○